

## 1 REPORTER'S RECORD

2 VOLUME 3 OF 12 VOLUMES

3 TRIAL COURT CAUSE NO. 114-0648-13  
12th COURT OF APPEALS  
TYLER, TEXAS

4 STATE OF TEXAS ) IN THE DISTRICT COURT  
5 ) CATHY S. LUSK  
6 ) Clerk  
7 VS. ) SMITH COUNTY, TEXAS  
8 )  
9 JOSEPH PIERCE ) 114TH JUDICIAL DISTRICT  
10  
11 \*\*\*\*\*  
12 HEARING ON MOTION TO REDUCE BOND  
13 \*\*\*\*\*  
14 On the 11th day of July, 2013, the following  
15 proceedings came on to be heard in the above-styled and  
-numbered cause before the HONORABLE CHRISTI J. KENNEDY,  
Judge Presiding, held in Tyler, Smith County, Texas:  
16  
17 Proceedings reported by Computerized  
Machine Stenography, Reporter's Record produced by  
Computer-Assisted Transcription.  
18 Court Reporter: CASSIE CONDREY.  
19 Texas CSR #9035  
20 Official Court Reporter  
114th Judicial District Court  
21 212 Smith County Courthouse  
Tyler, Texas 75702  
(903) 975-4331  
22  
23  
24  
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1                   A P P E A R A N C E S

2

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1                   P R O C E E D I N G S

2                   THE COURT: Cause number 114-0648-13.

3       State of Texas versus Joseph Pierce. Counsel for the  
4       State, counsel for the defendant, and the defendant are  
5       present in the courtroom.

6                   This is a hearing on the motion to reduce  
7       bail.

8                   Is the State ready?

9                   MR. MACHICEK: State's ready, Your Honor.

10                  THE COURT: Defense is ready?

11                  MS. LACY: We're ready, Your Honor.

12                  THE COURT: All right. Good morning,  
13 Mr. Pierce.

14                  THE DEFENDANT: Good morning.

15                  THE COURT: Mr. Pierce, before Ms. Lacy and  
16 the counsel for the State got here, you indicated you  
17 had something you wanted to talk to the Court about. I  
18 told you you couldn't talk to the Court without your  
19 counsel and counsel for the State being present.

20                  Is there still something you needed to go  
21 over with the Court?

22                  THE DEFENDANT: Yes, I have motions that I  
23 want to file.

24                  THE COURT: You have a motion you want to  
25 file?

1                   THE DEFENDANT: Yes, ma'am.

2                   THE COURT: Okay. Well, you have to not  
3 have a lawyer to be able to file your own motion. So do  
4 you want to not have a lawyer or do you want to have a  
5 lawyer?

6                   THE DEFENDANT: I do want a lawyer.

7                   THE COURT: Okay. All right. Well, if you  
8 will visit with Ms. Lacy, I'm sure she will file  
9 whatever motions that she feels are meritorious. But  
10 the Court doesn't allow people to file their own motions  
11 because it's just too -- confusing is not the right  
12 word. It just doesn't make business move along.

13                  THE DEFENDANT: I understand.

14                  THE COURT: You don't have a right to  
15 represent yourself and have somebody represent you at  
16 the same time.

17                  THE DEFENDANT: Yes, ma'am. Can I -- can I  
18 speak?

19                  THE COURT: Sure. You understand the  
20 lawyer for the State is here and anything you say about  
21 your case can be used against you?

22                  THE DEFENDANT: Yes.

23                  THE COURT: Okay.

24                  THE DEFENDANT: Yes, I understand.

25                  THE COURT: Okay.

1                   THE DEFENDANT: I'm being charged with a  
2 first-degree felony.

3                   THE COURT: All right.

4                   THE DEFENDANT: Which is a serious offense.

5                   THE COURT: It is.

6                   THE DEFENDANT: And I had these to file  
7 yesterday. Can I file these or can I --

8                   THE COURT: You can't file your own  
9 motions. Did you understand me to say you can't file  
10 your own motions?

11                  THE DEFENDANT: Oh, I'm sorry.

12                  THE COURT: I mean, did you understand  
13 that?

14                  THE DEFENDANT: Yes, ma'am.

15                  THE COURT: Okay.

16                  THE DEFENDANT: I want to -- can I speak  
17 with my attorney, please?

18                  MS. LACY: Judge, he has a motion  
19 requesting that I be replaced.

20                  THE COURT: Okay. Do you want to hire your  
21 own lawyer?

22                  THE DEFENDANT: Yes, ma'am.

23                  THE COURT: Okay.

24                  THE DEFENDANT: Because -- can I speak,  
25 please?

1                   THE COURT: Sure.

2                   THE DEFENDANT: I'm charged with a serious  
3 offense and I have not looked at this video and I tried  
4 to -- Ms. Lacy tried to let me look at the video  
5 yesterday and we were having trouble with the computer.  
6 There was no time or date on there and only had, like --  
7 we'll say 30 minutes that we got to watch.

8                   I mean, there's four CDs. I jumped  
9 straight to the last one and I didn't get enough time to  
10 look at the State -- what I want to fight my case -- my  
11 defense.

12                  THE COURT: Right. And let me mention this  
13 to you. Ms. Lacy, in the presence of counsel for the  
14 State, made the Court aware of the fact that you-all had  
15 not gotten to watch all the videos.

16                  And even though your case was set for an  
17 announcement on Monday, the Court made arrangements for  
18 you to be able to watch the videos as long as you need  
19 on Monday with Ms. Lacy and deferred an announcement  
20 until after that.

21                  So was there something else about the  
22 videos?

23                  THE DEFENDANT: Yes. Is there -- can I  
24 make the recommendation that they have no date and time  
25 on that police video? Can I get --

1                   THE COURT: Can you do what?

2                   THE DEFENDANT: -- the original?

3                   THE COURT: Can you do what?

4                   THE DEFENDANT: Get an original video to  
5 see a date and time on it?

6                   THE COURT: You really can't get an  
7 original video because the original video is -- is  
8 recorded in a car. I mean, is that the kind of video  
9 you're talking about?

10                  THE DEFENDANT: Yeah, with the date and  
11 time. This one has cropped out the date and time and  
12 it's -- I feel like it's been audited -- I mean, edited,  
13 ma'am.

14                  THE COURT: I would be very surprised if  
15 the State had changed the video in any way from how it  
16 originally appeared.

17                  THE DEFENDANT: There's just no -- there's  
18 no date or time on that and....

19                  THE COURT: Mr. Machicek, this is a pretty  
20 serious allegation. Has the State altered in any way  
21 the evidence that was provided in the discovery to the  
22 defense?

23                  MR. MACHICEK: No, Your Honor. I  
24 personally have not edited or tampered with the video  
25 that has been provided pursuant to discovery orders to

1 the defense. I wouldn't be capable of making such  
2 alterations. I don't believe -- or if I am in  
3 possession of that equipment, I am not proficient in how  
4 to use it. I've provided the defense everything that I  
5 have. I've watched the videos and they appear to be  
6 accurate.

7                   THE COURT: Mr. Pierce?

8                   THE DEFENDANT: I would like to make a  
9 statement that the video -- the computer that I was  
10 allowed to view on, there is a video-editing program.  
11 That's what I watched it on.

12                  THE COURT: Well, you probably know more  
13 about that than anybody who prepared the video for you,  
14 Mr. Pierce.

15                  THE DEFENDANT: Yes, ma'am. I would just  
16 like the time and the date to prepare my defense. And  
17 they had the -- Ms. Lacy did not advise me of the danger  
18 she put me in when she had me in the room with the DA  
19 investigator while we were discussing our case -- our  
20 whole strategy -- defense strategy. And they had the  
21 investigator in there listening to everything. But she  
22 did not advise me that --

23                  THE COURT: Ms. Lacy, is this Mr. Linn he's  
24 referring to? Was Mr. Linn in there when you-all were  
25 talking about the case?

1                   MS. LACY: He was in there at some point in  
2 time. The deputy that's generally downstairs when we  
3 come through the detector, she was the one that was  
4 really there the entire time.

5                   THE COURT: And that's because of the  
6 security issues?

7                   MS. LACY: Yes, ma'am.

8                   THE COURT: All right.

9                   MS. LACY: They will not leave the room.

10                  THE COURT: Huh?

11                  MS. LACY: They will not leave the room.

12                  THE COURT: And that's really because we  
13 don't have a secure facility to watch the videos.

14                  All right. Ms. Lacy, do you want to go  
15 forward on the motion to reduce bail today?

16                  MS. LACY: No, I think since he wants  
17 another attorney and he wants to hire somebody -- and I  
18 can say this to the Court. He's been getting input from  
19 two or three different lawyers.

20                  The motion that he's prepared to file was  
21 prepared by some lawyer. He's getting information from  
22 two different individuals, so I think it would probably  
23 be in his best interest that he retains one of them.

24                  THE COURT: Mr. Pierce, have other lawyers  
25 been talking to you about your case while you've been

1 represented by Ms. Lacy?

2 THE DEFENDANT: Not about the case. But  
3 they was asking me has she asked the questions that  
4 was --

5 THE COURT: Who are these lawyers?

6 THE DEFENDANT: And making sure that I --  
7 that I was having a --

8 THE COURT: Who are these lawyers?

9 THE DEFENDANT: His name is James. He's  
10 one of them.

11 MS. LACY: Judge --

12 THE DEFENDANT: Yeah. And he advised me --

13 THE COURT: Well, I still don't know who.  
14 Tell me who.

15 THE DEFENDANT: James Volberding,  
16 Kelly Pace, and Jason Ellis.

17 THE COURT: All right.

18 All right. Well, you're asking the Court  
19 to put off your case so that you can hire a lawyer?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: All right. Well, let's just go  
22 ahead and do that, then. The Court is continuing your  
23 case for a time of 60 days.

24 THE DEFENDANT: Awesome. Thank you.

25 THE COURT: And we'll just take your case

1 up at that time.

2 THE DEFENDANT: Thank you.

3 THE COURT: The Court -- Ms. Lacy, you're  
4 asking permission to withdraw from the case?

5 MS. LACY: I am, Your Honor.

6 THE COURT: The Court grants that motion.

7 THE DEFENDANT: Thank you, Your Honor.

8 THE COURT: Ms. Lacy is withdrawn as your  
9 counsel.

10 Mr. Pierce, you do need to make  
11 arrangements for another lawyer, though, like you've  
12 told the Court you want to do.

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: All right. Thank you. We're  
15 in recess on your case.

16 (Proceedings adjourned.)

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## **REPORTER'S CERTIFICATE**

THE STATE OF TEXAS )  
COUNTY OF SMITH )

5 I, Cassie Condrey, Official Court Reporter in and  
6 for the 114th District Court of Smith County, State of  
7 Texas, do hereby certify that the above and foregoing  
8 contains a true and correct transcription of all  
9 portions of evidence and other proceedings requested in  
10 writing by counsel for the parties to be included in  
11 this volume of the Reporter's Record, in the  
12 above-styled and -numbered cause, all of which occurred  
13 in open court or in chambers and were reported by me.

14 I further certify that this Reporter's Record of  
15 the proceedings truly and correctly reflects the  
16 exhibits, if any, admitted by the respective parties.

17            WITNESS MY OFFICIAL HAND this the 29th day of June,  
18 2014.

/s/Cassie Condrey  
CASSIE CONDREY, TX CSR #9035  
Certification Expires: 12-31-14  
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